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Supreme Court of the United States

October Term, 1964

No. [redacted] 91[redacted]

ELSIE C. WIPER, executrix of the Estate of JOSEPH W. WIPER, deceased,

Petitioner,

against

GREAT LAKES ENGINEERING WORKS,

Respondent.

REPLY BRIEF OF PETITIONER IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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HARVEY GOLDSTEIN,
on the Petition.

Supreme Court of the United States

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That Joseph Wiper, Chief Engineer, was subject to the orders of the Respondent's employees, working aboard the vessel was obvious. Wiper was indeed directed to find a part of the ship's propulsion system and went ashore in obedience to that order. John McLoughlin, an oiler, testified as follows, at pages 33 and 34:

> "Q. The evening of September 15th after you went on watch, did you have occasion to see or observe Mr. Wiper, the first assistant engineer? A. Yes, sir, I did.
>
> Q. Approximately when was that that you first saw him after you came on watch? A. That was around 8 o'clock.
>
> Q. Where was he at the time you observed him? A. He was in his room.
>
> Q. Did you go into his room? A. Yes, I did, I went in and woke him up.
>
> Q. What did you wake him up for? A. There was a part missing for the thrust bearing and the shipyard's man asked me to contact him and find

out where it was at. They were putting it together. He said he would go over in the shop and check on it.

Q. Was he dressed at the time you first went into his room? A. No, he was asleep.

Q. You had to wake him up? A. Yes.

Q. Was this part needed immediately? A. To put the thrust together, yes.

Q. The maintenance crew had asked you to get this part, is that correct? A. Yes."

Respondent, in its brief, sought to apply the "status" test only to the deceased and the Respondent, ignoring the obvious relationship of the deceased seaman to his ship.[1] As such, Respondent has misunderstood the decision of this Court in *Gutierrez* v. *Waterman,* 373 U. S. 206, in which the injured longshoreman sought relief against the shipowner under the general maritime law for an injury on the dock, predicated not upon the employment relationship of the parties but because of the status created between the worker and the ship, in furthering ship's business and contributing to its function as a vessel.

The relationship of the deceased to the ship cannot be diminished by the deceased's employment status with the vessel owner and the fact that the Respondent was an independent contractor furthering the function of the vessel. Respondent was contracted by the shipowner and was aboard the ship to return it to a seaworthy condition. Wiper was called upon to aid the Respondent in that service to the vessel and died while in that course.[2] The status thus

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[1] By reason of both employment aboard the vessel and the nature of his duties at the time of his death, which was contributing to the accomplishment of Respondent's mission to the function of the vessel, to its operation and welfare and to the advancement of ship's business.

[2] Proof of intoxication was less than absolute in view of expert testimony that alcohol continued to absorb into the blood stream after death (215), making it impossible to ascertain the alcohol content in the blood at the time of death.

created vis-à-vis Wiper, the Respondent and the vessel, established maritime jurisdiction to determine the responsibilities of the parties and cannot be negated by the requirement of an employment relationship.

The decision by the Court below was thus totally inconsistent with legislative and judicial efforts to expand the maritime jurisdiction so as to afford injured workers in maritime industries an opportunity to use the more liberal benefits of the Maritime and Admiralty jurisdiction to obtain compensation coverage or awards under the general maritime law, the Jones Act, 46 U. S. C. § 688, or by way of maintenance and cure, as the case might be, *Calbeck* v. *Travelers,* 370 U. S. 114; *Gutierrez* v. *Waterman,* 373 U. S. 206; *O'Donnell* v. *Great Lakes,* 318 U. S. 36, and *Aguilar* v. *Standard,* 318 U. S. 724.

The decision by the Court below was a negation of the effect of *Calbeck* and of its own decision in *Interlake* v. *Nielsen,* 338 F. 2d 879 (6C), in confining maritime jurisdictional boundaries to the "navigable waters" or "locale" test, a totally inconsistent position with the more recent decisions of this Court, above cited.

As such, this matter should be reviewed by this Honorable Court in an effort to once again establish definitive, uniform boundaries of maritime jurisdiction for all who would labor in the maritime industries, advancing ships' business.

CONCLUSION

A writ of certiorari should be granted in accordance with the prayer of this petition.

Dated: July 1, 1965.

Respectfully submitted,

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